14 CFR Part 91

[Docket No. 93–AWA–13]

RIN 2120–AF38

Proposed Alterations of the Los Angeles, CA, Class B Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces an extension of the comment period for Notice No. AF38, ''Proposed Alteration of the Los Angeles, CA, Class B Airspace'' (59 FR 60244; November 22, 1994). This comment period is extended from January 23, 1995 to February 22, 1995. The extension responds to requests from the Aircraft Owners and Pilots Association (AOPA) and the Southern California Airspace User's Working Group (SCAUWG) to allow additional time for specific comments responsive to Notice No. AF38.

DATES: The comment period is being extended from January 23, 1995 to February 22, 1995.

ADDRESSES: As stated in Notice No. AF38, comments should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Airspace Docket No. 93–AWA–13, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9230.

SUPPLEMENTARY INFORMATION: On November 22, 1994, the FAA published Notice No. AF38, ''Proposed Alteration of the Los Angeles, CA, Class B Airspace.'' This notice invites comments on issues related to the modification of the existing Los Angeles, CA, Class B Airspace area.

Written requests from both AOPA and SCAUWG were received by the FAA for a 30-day extension of the originally established comment period. This extension is requested to allow sufficient time for AOPA to disseminate the Notice information to the aeronautic public and provide sufficient time for airspace users and SCAUWG members to submit meaningful comments.

In order to give all interested persons additional time to be notified of the issues, and submit their specific comments, the FAA finds that it is in the public interest to extend the comment period. Accordingly, the comment period for Notice No. AF38 is extended to February 22, 1995.

Issued in Washington, DC on December 29, 1994.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

[FR Doc. 95–578 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–80–93]

RIN 1545–AS38

Rules for Certain Rental Real Estate Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing rules for rental real estate activities of taxpayers engaged in certain real property trades or businesses. The proposed regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993, and affect taxpayers subject to the limitations on passive activity losses and passive activity credits.

DATES: Written comments must be received by April 10, 1995. Outlines of oral comments to be presented at a public hearing scheduled for Thursday, May 11, 1995, at 10 a.m. must be received by April 20, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–80–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–80–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

The public hearing will be held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William M. Kostak, (202) 622–3080; concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in § 1.469–9(g). This information is required by the IRS to administer the rules under section 469(c)(7). This information will be used to determine whether a taxpayer that qualifies for relief under section 469(c)(7) has made the election to treat all of the taxpayer's interests in rental real estate as a single rental real estate activity as provided in section 469(c)(7)(A). The likely respondents are individuals or households, business or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden for making or revoking the election: 3,015 hours.

The estimated annual burden per respondent varies from 0.10 hours to 0.25 hours, depending on individual circumstances, with an estimated average of 0.15 hours.

Estimated number of respondents: 20,000 electing/100 revoking.

Estimated annual frequency of responses: on occasion.

Background

This document proposes amendments to 26 CFR part 1 to provide rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of section 469. Section 469 disallows losses from passive activities to the extent they exceed income from passive activities and similarly disallows credits from passive activities to the extent they exceed tax liability allocable to passive activities. In general, passive activities are activities in which the taxpayer does not

materially participate. In addition, until the enactment of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), all rental activities (including those in which a taxpayer materially participated) were passive.

OBRA 1993 added a new section 469(c)(7), which provides that rental real estate activities of qualifying taxpayers are not subject to the rule that treats all rental activities as passive. Thus, a rental real estate activity of a qualifying taxpayer is not passive if the taxpayer materially participates in the activity. Second, the new rules provide that each of a qualifying taxpayer's interests in rental real estate is treated as a separate activity unless the taxpayer elects to treat all interests in rental real estate as a single activity.

To qualify for this treatment under section 469(c)(7) for a taxable year, a taxpayer must perform, during that year, over 750 hours of personal services, and over half of the taxpayer's total personal services, in real property trades or businesses in which the taxpayer materially participates. A closely held C corporation is treated as satisfying these tests if more than 50 percent of its gross receipts for the taxable year are derived from real property trades or businesses in which it materially participates. For purposes of the qualification tests, a real property trade or business is defined as any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

Explanation of Provisions

1. Treatment of Rental Real Estate Activities of Qualifying Taxpayers

The proposed regulations provide that a rental real estate activity of a qualifying taxpayer will remain passive for a taxable year unless the taxpayer materially participates in the activity. This rule applies to all rental real estate activities of a qualifying taxpayer, including those giving rise to expenses described in section 212 of the Code.

2. Determination of Rental Real Estate Activities

The proposed regulations provide that the election to treat all interests in rental real estate as a single activity is binding for the taxable year in which it is made and for all future years in which the taxpayer is a qualifying taxpayer unless there is a material change in the taxpayer's facts and circumstances and the election is revoked. In addition, the regulations clarify that an electing taxpayer's limited partnership interests in rental real estate are combined with the taxpayer's other interests in rental real estate into a single rental real estate activity. The regulations also clarify that interests in rental real estate cannot be combined with other trades or businesses of the taxpayer into a single activity. For this purpose, however, any rental real estate that a taxpayer groups with a trade or business activity under § 1.469–4(d)(1)(i) (A) or (C) is not treated as an interest in rental real estate.

3. Treatment of Limited Partners

Section 469(c)(7) provides that the new rules for rental real estate activities are not to be construed as affecting the determination of whether a qualifying taxpayer materially participates with respect to any interest in a limited partnership as a limited partner. Thus, material participation with respect to a limited partnership interest is determined in accordance with section 469(h)(2), which provides that limited partners are treated as material participants only to the extent provided in regulations. The existing temporary regulations provide that material participation can generally be established by satisfying one of seven tests, but only three of these tests can be used to establish material participation with respect to limited partnership items. Accordingly, the proposed regulations provide that a qualifying taxpayer generally must establish material participation in a rental real estate activity held, in whole or part, through limited partnership interests under one of the three tests available to limited partners under the temporary regulations. This rule does not apply if the taxpayer elects to treat all interests in rental real estate as a single activity and less than 10 percent of the taxpayer's gross rental income from the activity is attributable to limited partnership interests. In that case, the taxpayer may use any of the seven tests under the temporary regulations to establish material participation in the activity.

4. Qualification Tests

As noted above, a taxpayer qualifies for the treatment prescribed in section 469(c)(7) by performing personal services in real property trades or businesses in which the taxpayer materially participates. The proposed regulations provide that, for purposes of the qualification tests, the determination of a taxpayer's real property trades or businesses is based on all of the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the facts and circumstances, but the determination must generally be applied consistently from year to year. The proposed regulations also provide that material participation in a real property trade or business is determined under the generally applicable rules of the existing temporary regulations.

5. Coordination With Former Passive Activity Rules

The proposed regulations clarify the treatment of suspended losses and credits allocable to a nonpassive rental real estate activity. They provide that the former passive activity rules of section 469(f) apply. Thus, the suspended loss or credit may be used to offset income from, or tax liability allocable to, the rental real estate activity, and any remaining loss or credit is treated as a loss or credit from a passive activity.

6. Coordination With $25,000 Offset for Rental Real Estate Activities

The proposed regulations clarify that a suspended loss or credit attributable to a nonpassive rental real estate activity may qualify under section 469(i) as a loss or credit from a rental real estate activity in which the taxpayer actively participates. Under section 469(i), such a loss or credit may be used to offset nonpassive income or tax liability attributable to nonpassive income, subject to a $25,000 limitation and an adjusted gross income phaseout. The proposed regulations also clarify that the $25,000 limitation is not reduced by losses or credits that are allowable under section 469(c)(7).

7. Regrouping Under the Activity Rules

The regulations defining an activity for purposes of section 469 (§ 1.469–4) include a consistency requirement. Once a taxpayer has grouped activities, they may not be regrouped unless the grouping is clearly inappropriate or there has been a material change in the facts and circumstances. The proposed regulations provide an exception to the consistency requirement for the first taxable year in which section 469(c)(7) applies. In that year, a taxpayer is permitted to regroup its activities to the extent necessary or appropriate to avail itself of the new rules.

The proposed regulations also provide that a taxpayer who adopted (or retained) a grouping of activities under Project PS–1–89 (the proposed definition of activity regulations) published in 1992 may regroup activities in the first taxable year in which the taxpayer determines tax liability under the rules of the final definition of activity regulations rather than under the proposed definition of activity regulations. The regulations also clarify that, in the first taxable year in

which a taxpayer applies the rules of either the proposed definition of activity regulations or the final definition of activity regulations in determining tax liability, the taxpayer must regroup its activities if its previous grouping is inconsistent with the applicable rules. Although the rules permitting or requiring a taxpayer to regroup activities refer to the taxpayer's determination of tax liability under section 469, they will be applied to partnerships and S corporations conducting activities subject to section 469.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 11, 1995, at 10:00 a.m. in the auditorium of the Internal Revenue Building. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and outlines of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 20, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William M. Kostak, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART I—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.469–9 also issued under 26 U.S.C. 469(c)(6), (h)(2), and (l)(1).

Par. 2. Section 1.469–0 is amended by:

1. Revising the entry for § 1.469–4(h).
2. Revising the heading for § 1.469–9 and adding entries for paragraphs (a) through (j) of § 1.469–9.
3. Revising the entry for § 1.469–11(b)(2) and removing the entries for § 1.469–11(b)(2) (i) and (ii).
4. Revising the entry for § 1.469–11(b)(3).
5. Adding an entry for § 1.469–11(b)(4).
6. The revisions and additions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–4 Definition of Activity.

* * * * *

(h) Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).

* * * * *

§ 1.469–9 Rules for certain rental real estate activities.

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  (1) General rule.
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(i) [Reserved].
(j) $25,000 offset for rental real estate activities of qualifying taxpayers.
  (1) In general.
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* * * * *

§ 1.469–11 Effective date and transition rules.

* * * * *

(b) * * *
  (2) Additional transition rule for 1992 amendments.
  (3) Fresh starts under consistency rules.
  (i) Regrouping when tax liability is first determined under Project PS–1–89.
  (ii) Regrouping when tax liability is first determined under § 1.469–4.
  (iii) Regrouping when taxpayer is first subject to section 469(c)(7).
  (4) Certain investment credit property.

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Par. 3. Section 1.469–4 is amended by revising paragraph (e)(1) and the heading of paragraph (h) and by adding the text of paragraph (h) to read as follows:

§ 1.469–4 Definition of Activity.

* * * * *

(e) * * *

(1) *Original groupings.* Except as provided in paragraph (e)(2) of this section and § 1.469–11, once a taxpayer has grouped activities under this section, the taxpayer may not regroup those activities in subsequent taxable years. Taxpayers must comply with disclosure requirements that the Commissioner may prescribe with respect to both their original groupings and the addition and disposition of specific activities within those chosen groupings in subsequent taxable years.

* * * * *

(h) *Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).* See § 1.469–9

for rules for certain rental real estate activities.

Par. 4. The heading of section 1.469–9 is revised, and the text of this section is added to read as follows:

§ 1.469–9 Rules for certain rental real estate activities.

(a) *Scope and purpose.* This section provides guidance to taxpayers engaged in certain real property trades or businesses on applying section 469(c)(7) to their rental real estate activities.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Trade or business.* A *Trade or business* is any trade or business determined by treating the types of activities in § 1.469–4(b)(1) as if they involved the conduct of a trade or business, and any interest in rental real estate, including any interest in rental real estate that gives rise to deductions under section 212.

(2) *Real property trade or business. Real property trade or business* is defined in section 469(c)(7)(C).

(3) *Rental real estate. Rental real estate* is any real property used by customers or held for use by customers in a rental activity within the meaning of § 1.469–1T(e)(3). However, any rental real estate that the taxpayer grouped with a trade or business activity under § 1.469–4(d)(1)(i) (A) or (C) is not an interest in rental real estate for purposes of this section.

(4) *Personal services. Personal services* means any work performed by an individual in connection with a trade or business. However, personal services do not include any work performed by an individual in the individual's capacity as an investor as described in § 1.469–5T(f)(2)(ii).

(5) *Material participation. Material participation* has the same meaning as under § 1.469–5T. Paragraph (f) of this section contains rules applicable to limited partnership interests in rental real estate that a qualifying taxpayer elects to aggregate with other interests in rental real estate of that taxpayer.

(6) *Qualifying taxpayer.* A *qualifying taxpayer* is a taxpayer that owns at least one interest in rental real estate and meets the requirements of paragraph (c) of this section.

(c) *Requirements for qualifying taxpayers*—(1) *In general.* A qualifying taxpayer must meet the requirements of section 469(c)(7)(B). A closely held C corporation meets these requirements by satisfying the requirements of section 469(c)(7)(D)(i). For purposes of section 469(c)(7)(D)(i), gross receipts do not include items of portfolio income within the meaning of § 1.469–2T(c)(3).

(2) *Requirement of material participation in the real property trades or businesses.* A taxpayer must materially participate in a real property trade or business in order for the personal services provided by the taxpayer in that real property trade or business to count towards meeting the requirements of paragraph (c)(1) of this section.

(3) *Treatment of spouses.* Spouses filing a joint return are qualifying taxpayers only if one spouse separately satisfies both requirements of section 469(c)(7)(B). In determining the real property trades or businesses in which a married taxpayer materially participates (but not for any other purpose under this paragraph (c)), work performed by the taxpayer's spouse in a trade or business is treated as work performed by the taxpayer under § 1.469–5T(f)(3), regardless of whether the spouses file a joint return for the year.

(4) *Employees in real property trades or businesses.* For purposes of paragraph (c)(1) of this section, personal services performed during a taxable year as an employee generally will be treated as performed in a trade or business but will not be treated as performed in a real property trade or business, unless the taxpayer is a five-percent owner (within the meaning of section 416(i)(1)(B)) in the employer at all times during the taxable year.

(d) *General rule for determining real property trades or businesses*—(1) *Facts and circumstances.* The determination of a taxpayer's real property trades or businesses for purposes of paragraph (c) of this section is based on all of the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the facts and circumstances in determining the real property trades or businesses in which the taxpayer provides personal services. Depending on the facts and circumstances, a real property trade or business consists either of one or more than one trade or business specifically described in section 469(c)(7)(C).

(2) *Consistency requirement.* Once a taxpayer determines the real property trades or businesses in which personal services are provided for purposes of paragraph (c) of this section, the taxpayer may not redetermine those real property trades or businesses in subsequent taxable years unless the original determination was clearly inappropriate or there has been a material change in the facts and circumstances that makes the original determination clearly inappropriate.

(e) *Treatment of rental real estate activities of a qualifying taxpayer*—(1) *In general.* Section 469(c)(2) does not apply to any rental real estate activity of a taxpayer for a taxable year in which the taxpayer is a qualifying taxpayer under paragraph (c) of this section. Instead, a rental real estate activity of a qualifying taxpayer is a passive activity under section 469 for the taxable year unless the taxpayer materially participates in the activity. Each interest in rental real estate of a qualifying taxpayer will be treated as a separate rental real estate activity, unless the taxpayer makes an election under paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity.

(2) *Treatment as a former passive activity.* For any taxable year in which a qualifying taxpayer materially participates in a rental real estate activity, that rental real estate activity will be treated as a former passive activity under section 469(f) if disallowed deductions or credits are allocated to the activity under § 1.469–1(f)(4).

(3) *Grouping rental real estate activities with other activities.* For purposes of this section, a qualifying taxpayer may not group a rental real estate activity with any other activity of the taxpayer. For example, if a qualifying taxpayer develops real property, constructs buildings, and owns an interest in rental real estate, the taxpayer's interest in rental real estate may not be grouped with the taxpayer's development activity or construction activity. Thus, only the participation of the taxpayer with respect to the rental real estate may be used to determine if the taxpayer materially participates in the rental real estate activity under § 1.469–5T.

(f) *Limited partnership interests in rental real estate activities*—(1) *In general.* If a taxpayer elects under paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity, and at least one interest in rental real estate is held by the taxpayer as a limited partnership interest (within the meaning of § 1.469–5T(e)(3)), the combined rental real estate activity will be treated as a limited partnership interest of the taxpayer for purposes of determining material participation. Accordingly, the taxpayer will not be treated under this section as materially participating in the combined rental real estate activity unless the taxpayer materially participates in the activity under the tests listed in § 1.469–5T(e)(2) (dealing with the tests for determining the material participation of a limited partner).

(2) *De minimis exception.* If a qualifying taxpayer elects under

paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity, and the taxpayer's share of gross rental income from all of the taxpayer's limited partnership interests in rental real estate is less than ten percent of the taxpayer's share of gross rental income from all of the taxpayer's interests in rental real estate for the taxable year, paragraph (f)(1) of this section does not apply. Thus the taxpayer may determine material participation under the seven tests listed in § 1.469–5T(a).

(g) *Election to treat all interests in rental real estate as a single rental real estate activity*—(1) *In general.* A qualifying taxpayer may make an election to treat all of the taxpayer's interests in rental real estate as a single rental real estate activity. This election is binding for the taxable year in which it is made and for all future years in which the taxpayer is also a qualifying taxpayer. However, if there is a material change in a taxpayer's facts and circumstances, the taxpayer may revoke the election using the procedure described in paragraph (g)(3) of this section.

(2) *Certain changes not material.* The fact that an election is less advantageous to the taxpayer in a particular taxable year is not, of itself, a material change in the taxpayer's facts and circumstances. Similarly, a break in the taxpayer's status as a qualifying taxpayer is not, of itself, a material change in the taxpayer's facts and circumstances.

(3) *Filing a statement to make or revoke the election.* A qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental real estate activity by filing a statement with the taxpayer's original income tax return for the taxable year. This statement must contain a declaration that the taxpayer is a qualifying taxpayer for the taxable year and is making the election pursuant to section 469(c)(7)(A). The taxpayer may make this election for any taxable year in which section 469(c)(7) is applicable. A taxpayer may revoke the election only in the taxable year in which a material change in the taxpayer's facts and circumstances occurs. To revoke the election, the taxpayer must file a statement with the taxpayer's original income tax return for that year. This statement must contain a declaration that the taxpayer is revoking the election under section 469(c)(7)(A) and an explanation of the nature of the material change.

(h) *Interests in rental real estate held by certain passthrough entities*—(1) *General rule.* Except as provided in paragraph (h)(2) of this section, a qualifying taxpayer's interest in rental real estate held by a partnership or an S corporation (passthrough entity) is treated as a single interest in rental real estate if the passthrough entity grouped its rental real estate as one rental activity under § 1.469–4(d)(5). If the passthrough entity groups its rental real estate into separate rental activities under § 1.469–4(d)(5), each rental real estate activity of a passthrough entity will be treated as a separate interest in rental real estate of a qualifying taxpayer. However, a taxpayer may elect under paragraph (g) of this section to treat all interests in rental real estate, including the rental real estate interests held through passthrough entities, as a single rental real estate activity.

(2) *Special rule if a qualifying taxpayer holds a fifty-percent or greater interest in a passthrough entity.* If a qualifying taxpayer holds a fifty-percent or greater interest in the capital, income, gain, loss, deduction, or credit of a passthrough entity at any time during the taxable year, each interest in rental real estate held by the passthrough entity will be treated as a separate interest in rental real estate of the qualifying taxpayer, regardless of the passthrough entity's grouping of activities under § 1.469–4(d)(5). However, the taxpayer may elect under paragraph (g) of this section to treat all interests in rental real estate, including the rental real estate interests held through passthrough entities, as a single rental real estate activity.

(i) [Reserved].

(j) *$25,000 offset for rental real estate activities of qualifying taxpayers*—(1) *In general.* A qualifying taxpayer's passive losses and credits from rental real estate activities (including suspended passive activity losses and credits from rental real estate activities in which the taxpayer materially participates) are allowed to the extent permitted under section 469(i).

(2) *Example.* The following example illustrates the application of this paragraph (j).

Example. (i) Taxpayer *A* owns building *X* and building *Y*, both interests in rental real estate. In 1995, *A* is a qualifying taxpayer within the meaning of paragraph (c) of this section. *A* does not elect to treat *X* and *Y* as one activity under section 469(c)(7)(A) and paragraph (g) of this section. As a result, *X* and *Y* are treated as separate activities pursuant to section 469(c)(7)(A)(ii). *A* materially participates in *X* which has $100,000 of passive losses disallowed from prior years and produces $20,000 of losses in 1995. *A* does not materially participate in *Y* which produces $40,000 of income in 1995. *A* also has $50,000 of income from other nonpassive sources in 1995. *A* otherwise meets the requirements of section 469(i).

(ii) Because *X* is not a passive activity in 1995, the $20,000 of losses produced by *X* in 1995 are nonpassive losses that may be used by *A* to offset part of the $50,000 of nonpassive income. Accordingly, *A* is left with $30,000 ($50,000 − $20,000) of nonpassive income. In addition, *A* may use the prior year disallowed passive losses of *X* to offset any income from *X* and passive income from other sources. Therefore, *A* may offset the $40,000 of passive income from *Y* with $40,000 of passive losses from *X*.

(iii) Because *A* has $60,000 ($100,000 − $40,000) of passive losses remaining from *X* and meets all of the requirements of section 469(i), *A* may offset up to $25,000 of nonpassive income with passive losses from *X* pursuant to section 469(i). As a result, *A* has $5,000 ($30,000 − $25,000) of nonpassive income remaining and disallowed passive losses from *X* of $35,000 ($60,000 − $25,000) in 1995.

Par. 5. Section 1.469–11 is amended as follows:

1. Paragraph (a)(2) is amended by removing ''; and'' and adding '';'' in its place.

2. Paragraph (a)(3) is redesignated as paragraph (a)(4) and a new paragraph (a)(3) is added.

3. Paragraph (b)(2)(ii) is removed, paragraph (b)(2)(i) is redesignated as paragraph (b)(2), and the heading for paragraph (b)(2) is revised.

5. Paragraph (b)(3) is redesignated as paragraph (b)(4).

6. A new paragraph (b)(3) is added.

7. The added and revised provisions read as follows:

§ 1.469–11 Effective date and transition rules.

(a) * * *

(3) The rules contained in § 1.469–9 apply for taxable years beginning on or after January 1, 1995, and to elections made under § 1.469–9(g) with returns filed on or after January 1, 1995; and

* * *

* * * * *

(b) * * * (2) *Additional transition rule for 1992 amendments.* * * *

(3) *Fresh starts under consistency rules*—(i) *Regrouping when tax liability is first determined under Project PS–1–89.* For the first taxable year in which a taxpayer determines its tax liability under Project PS–1–89, the taxpayer may regroup its activities without regard to the manner in which the activities were grouped in the preceding taxable year and must regroup its activities if the grouping in the preceding taxable year is inconsistent with the rules of Project PS–1–89.

(ii) *Regrouping when tax liability is first determined under § 1.469–4.* For the first taxable year in which a

taxpayer determines its tax liability under § 1.469–4, rather than under the rules of Project PS–1–89, the taxpayer may regroup its activities without regard to the manner in which the activities were grouped in the preceding taxable year and must regroup its activities if the grouping in the preceding taxable year is inconsistent with the rules of § 1.469–4.

(iii) *Regrouping when taxpayer is first subject to section 469(c)(7).* For the first taxable year beginning after December 31, 1993, a taxpayer may regroup its activities to the extent necessary or appropriate to avail itself of the provisions of section 469(c)(7) and without regard to the manner in which the activities were grouped in the preceding taxable year.

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Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–170 Filed 1–9–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–94–104]

RIN 2115–AE47

Drawbridge Operation Regulations; West Bay, Osterville, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the West Bay Bridge at mile 1.2 over West Bay in Osterville, Massachusetts. The special operating regulations formerly published at 33 CFR 117.78 were deleted in error. The bridge has not been operating in accordance with the existing general regulations. This proposal would correct the deletion error and publish the correct operating regulations for the bridge.

DATES: Comments must be received on or before March 13, 1995.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave, Boston, Massachusetts 02110–3350. Comments may also be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–94–104), the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bounded material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John McDonald, Project Manager, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The West Bay Bridge over West Bay in Osterville, Massachusetts has a vertical clearance of 15′ above mean high water (MHW) and 17′ above mean low water (MWL). Through an error, the special operating regulations for this bridge were deleted from 33 CFR 117.78. Therefore, the bridge is required to open on signal at all times under the general drawbridge operating regulations. Regulations published in the **Federal Register** of October 7, 1982 (47 FR 44258) read as follows:

(a) The draw shall open on signal from April 1 through October 31 on the following schedule:

(1) April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 until Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) For the remainder of this period the draw will open on signal if 4 hours notice is given in advance.

(b) From November 1 through March 31 the draw shall open on signal if a 24-hour notice is given in advance.

The bridge owner, the Massachusetts Highway Department (MHD), has been operating the bridge in accordance with the deleted regulations on an unofficial basis. The Coast Guard is proposing to publish regulations that reinstate the operating hours of the bridge contained in the erroneously deleted rule.

Discussion of Proposed Amendments

The MHD, after being advised of the deletion of the regulations covering its West Bay Bridge, has requested that operating hours be published to read as follows:

(a) The draw shall open or signal from April 1 through October 31 on the following schedule:

(1) From April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 until Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) At all other times from April 1 through October 31, the draw shall open on signal if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) From November 1 through March 31, the draw shall open if at least twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

The drawtenders will be on call to open the draw when the advance notice is given.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will